

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN S. SUESS and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 00-1922; Submitted on the Record;
Issued April 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an emotional condition in the performance of duty.

On February 4, 2000 appellant, then a 43-year-old distribution window mark-up clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on September 29, 1999 she first realized her depression and stress were due to her supervisor.

In a January 31, 2000 report, Dr. Gordon M. Goldman opined that he was "uncertain as to the cause of [appellant]'s symptoms" and that appellant had "family and work factors which could be contributing factors."

In an attending physician's report (Form CA-20) dated February 4, 2000, Dr. Wendy Myr-Cherry diagnosed anxiety and depression due to harassment at work.

By letter dated March 6, 2000, the Office of Workers' Compensation Programs advised appellant that the evidence of record was insufficient to establish her claim and advised her as to the type of medical and factual information required to support her claim.

By decision dated April 14, 2000, the Office found that appellant had not established fact of injury. The Office also noted that the evidence of record was insufficient to establish that the incident occurred at the time, place and in the manner alleged.¹

The Board finds that appellant had not established that she sustained an emotional condition in the performance of duty.

¹ Subsequent to the Office's April 14, 2000 decision, appellant submitted new evidence. The Board has no jurisdiction, however, to review evidence for the first time on appeal that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitations period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.⁷ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.⁸

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁹ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Gabe Brooks*, 51 ECAB ____ (Docket No. 98-1022, issued November 30, 1999); *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁷ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

⁸ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

⁹ See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.¹⁰

In the present case, appellant alleged that she sustained an emotional condition as a result of harassment by her supervisor. By decision dated April 14, 2000, the Office denied appellant's emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered employment factors under the terms of the Act.

Appellant has alleged that harassment on the part of her supervisors contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.¹¹ However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹² In the present case, appellant alleged that her supervisor harassed her, but she provided no specific allegations or corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually occurred.¹³ Thus, appellant has not established a compensable employment factor under the Act with respect to the claimed harassment and discrimination.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹⁴

¹⁰ *Id.*

¹¹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

¹² *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹³ *See William P. George*, 43 ECAB 1159, 1167 (1992).

¹⁴ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

The decision of the Office of Workers' Compensation Programs dated April 14, 2000 is hereby affirmed.

Dated, Washington, DC
April 19, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member